IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 31ST OCTOBER 2006 / 9TH KARTHIKA 1928

WP(C).No. 28569 of 2006(A)

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PETITIONER:

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KUMARI T.SUDHA, HSA (MATHS),
MMHSS UPPODU, EAST KALLADA P.O., KOLLAM
(PRESENTLY ON PROTECTION TO M.G.T. HIGH SCHOOL,
MUKHATALA, KOLLAM.)

BY ADV. SRI.M.V.THAMBAN
SRI.K.V.ANIL KUMAR

RESPONDENTS:

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1. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR (EDUCATION),
KOLLAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
KOLLAM.

4. STATE OF KERALA,
REP.BY THE SECRETARY TO GOVT.,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

5. P.JAYADEVI AMMA,
UPSA, M.M.H.S.UPPOODU, EAST KALLADA P.O.,
KOLLAM.

BY GOVT.PLEADER SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**A.K. Basheer, J.**

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**W.P(C) No. 28569 of 2006**

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**Dated this the 31st day of October, 2006.**

**J U D G M E N T**

Petitioner is a High School Assistant (Mathematics). According to her she is working in M.G.T. High School at Mukhathala in Kollam district under "protection".

2. Petitioner claims that she was appointed as Upper Primary School Assistant in Mahatmaji Memorial High School, Uppoodu with effect from June 27, 1988 against a promotion vacancy. It is admitted by the petitioner that the said appointment was not approved by the Controlling Officer. Later she was promoted as High school Assistant (Mathematics) with effect from June 1, 1989. The said promotion/appointment was also not approved, though a clear vacancy of HSA (Mathematics) was available. But that appointment was later approved with effect from December 12, 1991. It is the case of the petitioner that he was denied vacation salary from April 1, 1992 to May 31 1992.

3. Petitioner had submitted a representation praying for approval of her appointment as UPSA from June 27, 1998 till May 31, 1989 and as HSA from June 1, 1989 to December 11, 1991 and also from April 1, 1992 to May 31, 1992. Her representation was rejected by the District Educational officer on November 27, 1995 as revealed from Ext.P1 order holding that the vacancy of UPSA ought to have been filled up by appointing a protected teacher from other schools and that the order of appointment was not signed by the

approved manager. According to the petitioner she had preferred an appeal against the above order before respondent No.2 and sent a reminder also after some time requesting for early disposal.

4. It appears that respondent No.5 herein, who according to the petitioner was junior to her, had sought approval of her appointment as UPSA from June 1, 1989 to November 11, 1991. Petitioner contends that respondent No.5 has preferred Ext.P5 revision petition before the Government in this connection. The anxiety of the petitioner is that respondent No.5 would become senior if permission is granted for appointment of respondent No.5 with effect from June 1, 1989, since there was only one post of UPSA. Petitioner and respondent No.5 being the rival claimants, only one among them can claim the benefit of approval.

5. It is the contention of the petitioner that she had been promoted as HSA with effect from June 1, 1989 while she was working as UPSA; but her appointment as HSA had been approved only with effect from December 12, 1991. Therefore if the appointment of the petitioner as UPSA is not approved with effect from June 27, 1998 she ought to be given the benefit of approval of atleast as UPSA from June 1, 1989. She further contends that Ext.P4 communication issued by the Deputy Director of Education in response to her letter has been challenged by her in Ext.P6 revision petition before the Government.

6. The primary prayer in this writ petition is to issue a declaration that she is entitled to get her appointment approved from June 27, 1988 till May 31, 1989 and for disbursal of salary for that

period. There is a further prayer to approve her appointment as HSA and for grant of salary attached to that cadre with effect from June 1, 1989 till December 11, 1991. She further seeks to quash Exts.P1 to P4 orders. She has also prayed for other incidental reliefs to which no reference is now being made.

7. It is pertinent to note that the claim made by the petitioner for approval of her appointment as UPSA from June 27, 1988 to May 31, 1989 and as HSA from June 1, 1989 to December 11, 1991 was rejected by the District Educational Officer way back on November 27, 1995 as could be seen from Ext.P1. Though petitioner claims that she had preferred Ext.P2 appeal against the above order, there is no corresponding document to substantiate the above contention. Yet again, petitioner claims that she had submitted Ext.P3 reminder on June 24, 2006 to which the Appellate Authority, Deputy Director of Education had sent Ext.P4 reply. It is obvious that petitioner had kept quiet from 1995 till June 2006. In Ext.P4 the Deputy Director had informed her that the relevant file could not be traced out. I find it difficult to believe that petitioner would have kept quiet for more than 11 years without making any attempt to get the so called appeal that she had allegedly preferred against Ext.P1 order, disposed of. It is against normal human conduct, especially since the nature of her claim is vital as far as her career is concerned. Petitioner has now "created" a cause of action by getting a communication from the office of the Deputy Director after submitting Ext.P3 "reminder".

8. Even assuming respondent No.5 has preferred a revision before the Government in respect of her request for approval of her

appointment, I am unable to comprehend as to how that would have an impact on the claim of the petitioner. Even according to the petitioner she had been appointed as HSA with effect from June 1, 1989 till December 11, 1991. So obviously petitioner cannot claim approval of appointment as UPSA with effect from June 1, 1989. Anyhow, the request made by the petitioner for approval of her appointment as UPSA from June 27, 1988 had been turned down by the D.E.O. Similarly her claim for approval of appointment as HSA with effect from June 1, 1989 had also been rejected in 1995.

Having regard to the entire facts and circumstances I am not satisfied that the discretionary jurisdiction under Article 226 has to be invoked in aid of the petitioner, though she has approached this Court with a seemingly innocent prayer to issue a direction to the revisional authority to take a decision on Ext.P5. Her claim had obviously become stale and she has not stated any reason to explain the delay and laches. I do not find any merit in the writ petition, It is accordingly dismissed.

**A.K. Basheer**
**Judge.**

**an.**